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AMENDMENT TO SECTION 5 OF THE CIVIL LIABILITY ACT 2003 (QLD)

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On 20 March 2007 the *Criminal Code and Civil Liability Act 2007* (Qld) commenced to reinstate the intention of Parliament to protect the rights of workers under the *Civil Liability Act 2003* (Qld). The amendment was seen as necessary after the confusion created by the decision of *Newberry v Suncorp Metway Insurance Ltd* [2006] 1 Qd R 519 in interpreting s 5 of the *Civil Liability Act 2003*. Prior to amendment, s 5 of the *Civil Liability Act* stated (as relevant):

This Act does not apply in relation to any civil claim for damages for personal injury if the harm resulting from the breach of duty owed to the claimant is or includes -

(a) an injury as defined under the *WorkCover Queensland Act 1996*, other than an injury to which section 36(1)(c) or 371 of that Act applies; or

(b) an injury as defined under the *Workers' Compensation and Rehabilitation Act 2003*, other than an injury to which section 34(1)(c) or 352 of that Act applies.

Before the decision of *Newberry*, s 5 had been interpreted in two ways. First, that it excluded all claims for damages that involved a work related injury (except for journey claims) regardless of whether the injury was caused by the negligence of the employer or a third party. The alternative interpretation was only claims for injuries that fell within the ambit of the workers' compensation legislation were excluded from the Act and therefore the Act applied to actions against third parties.

The Queensland Court of Appeal decision of *Newberry* produced a different interpretation. The court held that a claim for damages against a third party was excluded from the operation of the *Civil Liability Act* if the employment was a significant contributing factor on a factual and liability basis.

In the Second Reading Speech the decision of *Newberry* was referred to, Mr McArdle stating:

The [*Civil Liability Act*] itself quite clearly is meant to exclude any action related to workers compensation or where a person is injured whilst he is an employee.

The amendment will simply rectify that situation and clarify once and for all that that is not the case... (Queensland, Legislative Assembly, *Debates*, (13 March 2007) p 911)

The Explanatory Notes to the Bill state:

Clause 8 amends section 5 of the *Civil Liability Act 2003* so that the Act will not apply to a decision about liability or awards of damages for personal injury if the harm resulting from the breach of duty is or includes an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003* or the repealed *WorkCover Queensland Act 1996* ... (p 8).

Now, s 5 of the Act provides (as relevant):

(1) This Act does not apply in relation to deciding liability or awards of damages for personal injury if the harm resulting from the breach of duty is or includes -

(a) an injury for which compensation is payable under the *WorkCover Queensland Act 1996*, other than an injury to which section 36(1)(c) or 371 of that Act applies; or

(b) an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003*, other than an injury to which section 34(1)(c) or 352 of that Act applies;

...

(2) For subsection (1)(a) or (b), the following is immaterial -

- (a) whether compensation for the injury is actually claimed under the relevant Workers' Compensation Act;
 - (b) whether the entitlement to seek damages for the injury is regulated under that Act.
- (3) To remove any doubt, it is declared that a breach of duty mentioned in subsection (1) includes a breach of duty giving rise to a dependency claim.
- (4) In this section -
- compensation for injury, under a relevant Workers' Compensation Act, includes payment of-
- (a) reasonable expenses for medical treatment or attendance; and
 - (b) funeral expenses.
- relevant Workers' Compensation Act means-
- (a) for compensation, or an entitlement to seek damages, for an injury mentioned in subsection (1)(a) - the *WorkCover Queensland Act 1996*; or
 - (b) for compensation, or an entitlement to seek damages, for an injury mentioned in subsection (1)(b) - the *Workers' Compensation and Rehabilitation Act 2003*.

For injuries sustained on or after 6 November 2006, if the claims for personal injury may be compensated under the workers' compensation scheme, with the exception of journey claims, the *Civil Liability Act* does not apply (*Civil Liability Act 2003*, s 83(1)).¹ The exclusion applies even if no workers' compensation claim has been made or no benefit has been received. The existence of an entitlement to the benefit under the workers' compensation scheme will exclude the claim.

Therefore if a worker is injured and is entitled to claim workers' compensation, should they be permitted to take action under the common law, the thresholds and limits provided by Ch 3 of the *Civil Liability Act* do not apply.

¹ For injuries suffered before this date, the decision of *Newberry* will apply.